

**REMARKS**

Claims 1-28 were pending in this application.

Claims 1-28 have been rejected.

Claims 1-15 and 24-26 have been amended in this Response.

Claims 1-28 remain pending in this application.

Reconsideration of Claims 1-28 is respectfully requested.

**I. IN THE SPECIFICATION**

In Section 8 of the July 7, 2004, Office Action, the Examiner objects to the disclosure because the cross-reference to related applications had not been correctly described. The Applicants have amended the disclosure in response to the Examiner's comments and respectfully request that the objection be withdrawn.

**II. REJECTIONS UNDER 35 U.S.C. § 112**

Claim 13 and 16-24 are rejected in Sections 1 and 2 of the July 7, 2004, Office Action under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. The Applicant respectfully traverses this rejection.

The Office Action rejects Claim 13 for reciting the term "charhing". The Applicants have amended the claim to correct the typographical error noted by the Examiner.

The Office Action rejects Claims 16-23 as indefinite for reciting a “system”, which can be one of several different statutory classes of invention. Claim 16 recites a system that is an apparatus comprising the elements of a database, a processor and a control program. Claims 17-23 recite additional elements of the system or additional limitations on the elements recited in Claim 16.

The Office Action rejects Claim 24 as confusing. In response to the rejection, the Applicants have amended the claim to more clearly recite the Applicants’ invention.

For these reasons, the Applicants respectfully submit that Claims 13 and 16-24 are definite and particularly point out and distinctly claim the subject matter regarded as the invention. Accordingly, the Applicants respectfully request withdrawal of the § 112 definiteness rejection.

### **III. REJECTION UNDER 35 U.S.C. § 101**

The July 7, 2004, Office Action, in Sections 3 and 4, rejects Claims 1-28 under 35 U.S.C. § 101 as non-statutory because the method claims do not claim a technological basis. The Applicants respectfully traverse this rejection.

As amended, independent Claim 1 (and Claims 2-15 depending therefrom) recites a method of exchanging tickets electronically. The process includes steps in which an electronic ticket control system is provided that issues virtual tickets to patrons of a public facility; the virtual ticket devices send virtual ticket exchange requests and exchange confirmation messages to, and receive exchange notification messages from, the electronic ticket control system; and the virtual tickets are updated when all associated virtual ticket devices have confirmed a ticket exchange request. Similarly,

amended independent Claim 24 and its dependent claims recite a method of exchanging tickets electronically in which an exchange of tickets held by patrons of a public facility is electronically brokered. Thus, amended independent Claims 1 and 24 and their dependent claims produce the concrete, tangible and useful result of electronically exchanging tickets, or electronically brokering the exchange of tickets, between patrons of a public facility.

As described above with respect to the § 112 rejection, Claims 16-23 recite a system that is an apparatus comprising the elements of a database, a processor and a control program. As such, the Applicants respectfully assert that Claims 16-23 are not method claims without a technological basis.

For these reasons, the Applicants respectfully submit that Claims 1-28 recite statutory subject matter and respectfully request the withdrawal of the rejection under 35 U.S.C. § 101.

#### **IV. REJECTIONS UNDER 35 U.S.C. § 103**

In Sections 5-7, the July 7, 2004, Office Action rejects Claims 1-16, 18-24, 26 and 27 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,496,809 to Nakfoor (“*Nakfoor*”) in view of U.S. Patent No. 5,794,207 to Walker et al. (“*Walker*”). The Office Action rejects Claims 17, 25 and 28 under 35 U.S.C. § 103(a) as being unpatentable over *Nakfoor* and *Walker*, and further in view of U.S. Patent No. 5,769,269 to Peters (“*Peters*”). These rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to

deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on the applicant's disclosure. MPEP § 2142.

Initially, the Applicants note that the rejections in Sections 6 and 7 of the July 7, 2004, Office Action did not specify the full patent numbers of the patents relied upon in the rejections. However, patents to the inventors named in the rejections were found among the patents listed on the Form PTO-892 Notice of References Cited. The Applicants have made the assumption in this Response that those were the patents relied upon in the rejections. Furthermore, while Claims 17, 25 and 28 were rejected as unpatentable over the combination of the *Nakfoor*, *Walker* and *Peters* references, the explanation of the rejection also relied upon the teachings of a “Senga”. The Applicants have also made the assumption in this Response that the patent to an inventor named Senga listed in the Notice of References Cited was the reference relied upon in the rejection.

The Office Action asserts, regarding Claim 1, that the *Nakfoor* reference discloses an electronic ticket control system that receives virtual ticket exchange requests. The Office Action further asserts, regarding Claim 24, that *Nakfoor* teaches electronically brokering the exchange of seats. The Applicants respectfully submit that the Examiner has misunderstood the teaching of the *Nakfoor* reference.

The *Nakfoor* reference describes a method of electronically exchanging tickets in a secondary market between sellers and buyers. *See Nakfoor, Abstract*. A user may purchase tickets in a primary market from the event sponsor, or resell the tickets to another user in a secondary market. *See Nakfoor, col. 3, lines 34-39*. While *Nakfoor* teaches that tickets may be traded in the secondary market using an exchange-type format, the description of the format makes it clear that it is a process like that used at the New York Stock Exchange for arriving at an agreed sale price between buyer

and seller. In the exchange-type format described in the *Nakfoor* reference, sellers advertise an ‘ask’ price that they want to receive for their tickets, while buyers advertise a ‘bid’ price that they are willing to pay for tickets. When any buyer’s bid price meets or exceeds a seller’s ask price, the system of *Nakfoor* consummates the sale of that seller’s tickets to that buyer. *See Nakfoor, col. 4, lines 25-34.* In short, the *Nakfoor* reference teaches a method and system for selling tickets.

As such, the *Nakfoor* reference does not describe a method or system for exchanging tickets electronically, as recited in independent Claims 1, 16 and 24. Furthermore, the Applicants respectfully assert that neither the *Walker, Peters* nor *Senga* reference does anything to remedy this shortcoming. Therefore, the *Nakfoor, Walker, Peters* and *Senga* references, either alone or in combination, do not disclose, suggest or hint at all the claim limitations of independent Claims 1, 16 and 24 as amended. Claims 2-15, 17-23 and 25-28 depend from Claims 1, 16 and 24, respectively, and contain all the limitations of their base claims. The Applicant respectfully requests that the rejection of Claims 1-28 under 35 U.S.C. § 103(a) be withdrawn and that Claims 1-28 be passed to allowance.

V. **CONCLUSION**

For the reasons given above, the Applicant respectfully requests reconsideration and full allowance of all pending claims and that this application be passed to issue.

**SUMMARY**

If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *wmunck@davismunck.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication (including any extension of time fees) or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

DAVIS MUNCK, P.C.

Date:

October 7, 2004

Frederick D. Hamilton

Frederick D. Hamilton  
Registration No. 29,717

P.O. Drawer 800889  
Dallas, Texas 75380  
Phone: (972) 628-3600  
Fax: (972) 628-3616  
E-mail: *fhamilton@davismunck.com*